

SENATE, No. 309

STATE OF NEW JERSEY 214th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2010 SESSION

Sponsored by:

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District 7 (Burlington and Camden)

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SYNOPSIS

Provides unemployment benefits for certain spouses of National Guard members.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



1 **AN ACT** providing unemployment benefits for certain spouses of
2 National Guard members and amending R.S.43:21-5

3

4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6

7 1. R.S.43:21-5 is amended to read as follows:

8 43:21-5. An individual shall be disqualified for benefits:

9 (a) For the week in which the individual has left work
10 voluntarily without good cause attributable to such work, and for
11 each week thereafter until the individual becomes reemployed and
12 works four weeks in employment, which may include employment
13 for the federal government, and has earned in employment at least
14 six times the individual's weekly benefit rate, as determined in each
15 case. This subsection shall apply to any individual seeking
16 unemployment benefits on the basis of employment in the
17 production and harvesting of agricultural crops, including any
18 individual who was employed in the production and harvesting of
19 agricultural crops on a contract basis and who has refused an offer
20 of continuing work with that employer following the completion of
21 the minimum period of work required to fulfill the contract.

22 (b) For the week in which the individual has been suspended or
23 discharged for misconduct connected with the work, and for the five
24 weeks which immediately follow that week, as determined in each
25 case. In the event the discharge should be rescinded by the
26 employer voluntarily or as a result of mediation or arbitration, this
27 subsection (b) shall not apply, provided, however, an individual
28 who is restored to employment with back pay shall return any
29 benefits received under this chapter for any week of unemployment
30 for which the individual is subsequently compensated by the
31 employer.

32 If the discharge was for gross misconduct connected with the
33 work because of the commission of an act punishable as a crime of
34 the first, second, third or fourth degree under the "New Jersey Code
35 of Criminal Justice," N.J.S.2C:1-1 et seq., the individual shall be
36 disqualified in accordance with the disqualification prescribed in
37 subsection (a) of this section and no benefit rights shall accrue to
38 any individual based upon wages from that employer for services
39 rendered prior to the day upon which the individual was discharged.

40 The director shall insure that any appeal of a determination
41 holding the individual disqualified for gross misconduct in
42 connection with the work shall be expeditiously processed by the
43 appeal tribunal.

44 (c) If it is found that the individual has failed, without good
45 cause, either to apply for available, suitable work when so directed

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

 Matter underlined thus is new matter.

1 by the employment office or the director or to accept suitable work
2 when it is offered, or to return to the individual's customary self-
3 employment (if any) when so directed by the director. The
4 disqualification shall continue for the week in which the failure
5 occurred and for the three weeks which immediately follow that
6 week, as determined:

7 (1) In determining whether or not any work is suitable for an
8 individual, consideration shall be given to the degree of risk
9 involved to health, safety, and morals, the individual's physical
10 fitness and prior training, experience and prior earnings, the
11 individual's length of unemployment and prospects for securing
12 local work in the individual's customary occupation, and the
13 distance of the available work from the individual's residence. In
14 the case of work in the production and harvesting of agricultural
15 crops, the work shall be deemed to be suitable without regard to the
16 distance of the available work from the individual's residence if all
17 costs of transportation are provided to the individual and the terms
18 and conditions of hire are as favorable or more favorable to the
19 individual as the terms and conditions of the individual's base year
20 employment.

21 (2) Notwithstanding any other provisions of this chapter, no
22 work shall be deemed suitable and benefits shall not be denied
23 under this chapter to any otherwise eligible individual for refusing
24 to accept new work under any of the following conditions: the
25 position offered is vacant due directly to a strike, lockout, or other
26 labor dispute; the remuneration, hours, or other conditions of the
27 work offered are substantially less favorable to the individual than
28 those prevailing for similar work in the locality; or, the individual,
29 as a condition of being employed, would be required to join a
30 company union or to resign from or refrain from joining any bona
31 fide labor organization.

32 (d) If it is found that this unemployment is due to a stoppage of
33 work which exists because of a labor dispute at the factory,
34 establishment or other premises at which the individual is or was
35 last employed.

36 (1) No disqualification under this subsection (d) shall apply if it
37 is shown that:

38 (a) The individual is not participating in or financing or directly
39 interested in the labor dispute which caused the stoppage of work;
40 and

41 (b) The individual does not belong to a grade or class of workers
42 of which, immediately before the commencement of the stoppage,
43 there were members employed at the premises at which the
44 stoppage occurs, any of whom are participating in or financing or
45 directly interested in the dispute; provided that if in any case in
46 which (a) or (b) above applies, separate branches of work which are
47 commonly conducted as separate businesses in separate premises

1 are conducted in separate departments of the same premises, each
2 department shall, for the purpose of this subsection, be deemed to
3 be a separate factory, establishment, or other premises.

4 (2) For any claim for a period of unemployment commencing on
5 or after December 1, 2004, no disqualification under this subsection
6 (d) shall apply if it is shown that the individual has been prevented
7 from working by the employer, even though the individual's
8 recognized or certified majority representative has directed the
9 employees in the individual's collective bargaining unit to work
10 under the preexisting terms and conditions of employment, and the
11 employees had not engaged in a strike immediately before being
12 prevented from working.

13 (e) For any week with respect to which the individual is
14 receiving or has received remuneration in lieu of notice.

15 (f) For any week with respect to which or a part of which the
16 individual has received or is seeking unemployment benefits under
17 an unemployment compensation law of any other state or of the
18 United States; provided that if the appropriate agency of the other
19 state or of the United States finally determines that the individual is
20 not entitled to unemployment benefits, this disqualification shall not
21 apply.

22 (g) (1) For a period of one year from the date of the discovery
23 by the division of the illegal receipt or attempted receipt of benefits
24 contrary to the provisions of this chapter, as the result of any false
25 or fraudulent representation; provided that any disqualification may
26 be appealed in the same manner as any other disqualification
27 imposed hereunder; and provided further that a conviction in the
28 courts of this State arising out of the illegal receipt or attempted
29 receipt of these benefits in any proceeding instituted against the
30 individual under the provisions of this chapter or any other law of
31 this State shall be conclusive upon the appeals tribunal and the
32 board of review.

33 (2) A disqualification under this subsection shall not preclude
34 the prosecution of any civil, criminal or administrative action or
35 proceeding to enforce other provisions of this chapter for the
36 assessment and collection of penalties or the refund of any amounts
37 collected as benefits under the provisions of R.S.43:21-16, or to
38 enforce any other law, where an individual obtains or attempts to
39 obtain by theft or robbery or false statements or representations any
40 money from any fund created or established under this chapter or
41 any negotiable or nonnegotiable instrument for the payment of
42 money from these funds, or to recover money erroneously or
43 illegally obtained by an individual from any fund created or
44 established under this chapter.

45 (h) (1) Notwithstanding any other provisions of this chapter
46 (R.S.43:21-1 et seq.), no otherwise eligible individual shall be
47 denied benefits for any week because the individual is in training

1 approved under section 236(a)(1) of the "Trade Act of 1974,"
2 Pub.L.93-618 (19 U.S.C. s.2296 (a)(1)) nor shall the individual be
3 denied benefits by reason of leaving work to enter this training,
4 provided the work left is not suitable employment, or because of the
5 application to any week in training of provisions in this chapter
6 (R.S.43:21-1 et seq.), or any applicable federal unemployment
7 compensation law, relating to availability for work, active search
8 for work, or refusal to accept work.

9 (2) For purposes of this subsection (h), the term "suitable"
10 employment means, with respect to an individual, work of a
11 substantially equal or higher skill level than the individual's past
12 adversely affected employment, as defined for purposes of the
13 "Trade Act of 1974," Pub.L.93-618 (19 U.S.C. s.2101 et seq.) and
14 wages for this work at not less than 80% of the individual's average
15 weekly wage, as determined for the purposes of the "Trade Act of
16 1974."

17 (i) For benefit years commencing after June 30, 1984, for any
18 week in which the individual is a student in full attendance at, or on
19 vacation from, an educational institution, as defined in subsection
20 (y) of R.S.43:21-19; except that this subsection shall not apply to
21 any individual attending a training program approved by the
22 division to enhance the individual's employment opportunities, as
23 defined under subsection (c) of R.S.43:21-4; nor shall this
24 subsection apply to any individual who, during the individual's base
25 year, earned sufficient wages, as defined under subsection (e) of
26 R.S.43:21-4, while attending an educational institution during
27 periods other than established and customary vacation periods or
28 holiday recesses at the educational institution, to establish a claim
29 for benefits. For purposes of this subsection, an individual shall be
30 treated as a full-time student for any period:

31 (1) During which the individual is enrolled as a full-time student
32 at an educational institution, or

33 (2) Which is between academic years or terms, if the individual
34 was enrolled as a full-time student at an educational institution for
35 the immediately preceding academic year or term.

36 (j) Notwithstanding any other provisions of this chapter
37 (R.S.43:21-1 et seq.), no otherwise eligible individual shall be
38 denied benefits because the individual left work or was discharged
39 due to circumstances resulting from the individual being a victim of
40 domestic violence as defined in section 3 of P.L.1991, c.261
41 (C.2C:25-19). No employer's account shall be charged for the
42 payment of benefits to an individual who left work due to
43 circumstances resulting from the individual being a victim of
44 domestic violence.

45 For the purposes of this subsection (j), the individual shall be
46 treated as being a victim of domestic violence if the individual
47 provides one or more of the following:

1 (1) A restraining order or other documentation of equitable
2 relief issued by a court of competent jurisdiction;

3 (2) A police record documenting the domestic violence;

4 (3) Documentation that the perpetrator of the domestic violence
5 has been convicted of one or more of the offenses enumerated in
6 section 3 of P.L.1991, c.261 (C.2C:25-19);

7 (4) Medical documentation of the domestic violence;

8 (5) Certification from a certified Domestic Violence Specialist
9 or the director of a designated domestic violence agency that the
10 individual is a victim of domestic violence; or

11 (6) Other documentation or certification of the domestic
12 violence provided by a social worker, member of the clergy, shelter
13 worker or other professional who has assisted the individual in
14 dealing with the domestic violence.

15 For the purposes of this subsection (j):

16 "Certified Domestic Violence Specialist" means a person who
17 has fulfilled the requirements of certification as a Domestic
18 Violence Specialist established by the New Jersey Association of
19 Domestic Violence Professionals; and "designated domestic
20 violence agency" means a county-wide organization with a primary
21 purpose to provide services to victims of domestic violence, and
22 which provides services that conform to the core domestic violence
23 services profile as defined by the Division of Youth and Family
24 Services in the Department of Children and Families and is under
25 contract with the division for the express purpose of providing such
26 services.

27 (k) (1) Notwithstanding any other provisions of this chapter
28 (R.S. 43:21-1 et seq.), no otherwise eligible individual shall be
29 denied benefits for any week in which the individual left work
30 voluntarily and without good cause attributable to the work, if the
31 individual left work to accompany his or her spouse who is an
32 active member of the United States Armed Forces, as defined in
33 N.J.S.38A:1-1(g), to a new place of residence outside the State, due
34 to the armed forces member's transfer to a new assignment in a
35 different geographical location outside the State, and the individual
36 moves to the new place of residence not more than nine months
37 after the spouse is transferred, and upon arrival at the new place of
38 residence the individual was in all respects available for suitable
39 work. No employer's account shall be charged for the payment of
40 benefits to an individual who left work under the circumstances
41 contained in this [subsection (k)] paragraph (1), except that this
42 shall not be construed as relieving the State of New Jersey and any
43 other governmental entity or instrumentality or nonprofit
44 organization electing or required to make payments in lieu of
45 contributions from its responsibility to make all benefit payments
46 otherwise required by law and from being charged for those benefits
47 as otherwise required by law.

1 (2) Notwithstanding any other provisions of this chapter
2 (R.S.43:21-1 et seq.), no otherwise eligible individual shall be
3 denied benefits for any week in which the individual left work
4 voluntarily and without good cause attributable to the work, if the
5 individual left work as the result of an extreme emergency or family
6 hardship which occurred due to the deployment of his or her spouse
7 who is an active member of the National Guard, as defined in
8 N.J.S.38A:1-1(b). The definition of extreme emergency and family
9 hardship shall be determined by the Commissioner of Labor and
10 Workforce Development by regulation. No employer's account
11 shall be charged for the payment of benefits to an individual who
12 left work under the circumstances contained in this paragraph (2),
13 except that this shall not be construed as relieving the State of New
14 Jersey and any other governmental entity or instrumentality or
15 nonprofit organization electing or required to make payments in lieu
16 of contributions from its responsibility to make all benefit payments
17 otherwise required by law and from being charged for those benefits
18 as otherwise required by law.

19 (cf: P.L.2007, c.162)

20
21 2. This act shall take effect immediately.

22 23 24 STATEMENT

25
26 This bill creates an exception under the current unemployment
27 benefits program to allow the spouse of an active member of the
28 New Jersey National Guard to receive unemployment benefits if the
29 individual left work as the result of an extreme emergency or family
30 hardship which occurred due to the deployment of his or her spouse.
31 The definition of extreme emergency and family hardship is to be
32 determined by the Commissioner of Labor and Workforce
33 Development.

34 Under the bill, employers whose workers receive benefits will not
35 be charged for these benefits, except for governmental or non-profit
36 “reimbursable” employers who make no contributions into the
37 unemployment compensation fund.

38 When a member of the National Guard is deployed, the
39 member's spouse is sometimes forced to quit his or her job due to
40 an extreme emergency or family hardship. Under current law, the
41 spouse would not qualify for unemployment insurance benefits
42 because the law regards the separation from work as voluntary and
43 without good cause attributable to the work.